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In The

Supreme Court of the United States

No. 269
October Term, 1961

MORRIS W. LIPP, trading as Midwest Poster Exchange,
Petitioner

BENJAMIN SIEGEL, trading as Theatre Advertising Company,
Petitioner

FANNIE SCHRADER, Administratrix of the Estate of Jay Schrader, trading as Charlotte Poster Exchange, Deceased,
Petitioner

DAVID MITCHEL, trading as Southwest Poster Service,
Petitioner

JACOB RIFF,
Petitioner

HARRY VOGELSTEIN, trading as Baltimore Poster Company,
Petitioner

v.

NATIONAL SCREEN SERVICE CORPORATION ET AL.,
Respondent

CHARLES LAWLOR and MITCHELL PANTZER, co-partners trading as Independent Poster Exchange et al.,
Petitioners

v.

NATIONAL SCREEN SERVICE CORPORATION ET AL.,
Respondent

PETITIONERS' REPLY BRIEF

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PETITIONERS' REPLY BRIEF

The Brief For Respondents In Opposition contains three material misstatements of fact:

(1)

Respondents' statement (page 8, line 24) that petitioners' counsel ". . . agreed that the stipulation was made with authority (7b 8b)" is unfounded and untrue, and this untrue statement, unsupported, as it is, by any quotation from the record, is repeated in exaggerated form at page 11, note 12, as follows:

> ". . . as our Statement (p. 8, *supra*) indicates, petitioners' counsel clearly abandoned any question of lack of authority during the argument in the district court on the present issues."

What petitioners' counsel stated in the District Court in this connection is fully quoted at pages 7-8 and 14-15 of the petition filed in this Court, and reference thereto will show that both before and after the stipulation was adopted petitioners' counsel repeatedly and consistently asserted that he had not been authorized by any of the petitioners to enter into any stipulation.

It is true, as respondents assert (page 11, note 12) that prior to the time of the adoption of the stipulation counsels' declaration of lack of authority related only to the proposal of waiver of a jury trial, but it seems self

evident that if counsel lacked authority to agree to waiver of a jury trial it could not reasonably be assumed that he had been given authority to agree that his clients' cases might be dismissed without opportunity for a hearing before either the court or jury.

Furthermore, it might be noted that neither of the opinions rendered by the courts below proceeds on the theory that petitioners' counsel had not given notice of lack of any express authority to enter into the stipulation.

(2)

At page 14, lines 7-9, respondents state, in effect, that petitioners' cases "have already been fully tried and adjudicated in the Lawlor case"; and similarly, at page 10, line 6, respondents state that petitioners' cases and the Lawlor case are "based upon precisely the same evidence."

These are incorrect statements of fundamental importance.

For instance, it cannot truthfully be said that petitioner Mitchel's case was "fully tried" in the Lawlor case because the undisputed fact is that in the trial of the Lawlor case the court rejected, as incompetent, certain relevant and material evidence of conspiracy which would have been unquestionably competent if Mitchel's case had been on trial (petition pages 8-14). This rejected evidence has never been heard by any court, and therefore it is certain that Mitchel's case has not been "fully tried"; and by the same token, none of the cases of the other petitioners has been fully tried because there has been no consolidation for trial of any case with any other case, and therefore the amount of possible evidence yet to be heard is unlimited.

(3)

At page 16, lines 11-14, respondents state that:

> "The stipulation *expressly* provided that if the plaintiffs established a Sherman Act violation in Lawlor there would be left for trial in petitioners' cases only the remaining issues peculiar to petitioners." (Emphasis added.)

There is certainly no such *express* provision in the stipulation, and it is far from clear that any such provision can reasonably be implied; but all of this is really immaterial in view of the fact that, even if thus construed, the stipulation would still be invalid because of the omission of any grant of right to any petitioner to introduce on his own behalf any evidence in the trial of the Lawlor case.

CONCLUSION

Wherefore it is submitted that petitioners' prayer for issuance of a writ of certiorari to the United States Court of Appeals for the Third Circuit should be granted.

Respectfully submitted,

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Attorney for Petitioners.